

ADOT/JPA File No.: 07-102 I
AG Contract No.: P001 2007 004281
Project: 2 MultiUse Pathway Projects
Section: Snyder Blvd. and Coronado
Drive
**TRACS No.: SL609 01C, 02D;
SL628 01C, 02D**
Budget Source Item No.: TEA
Federal Funds

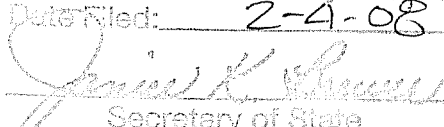

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
CITY OF SIERRA VISTA

THIS AGREEMENT is entered into February 4th, 2008, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SIERRA VISTA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of Transportation Enhancement activities.
4. This Agreement pertains to the design and construction by the City of two separate multi-use pathways, plus related landscaping and drainage improvements, all to be maintained by the City. The first pathway involves a 10-foot wide, asphalt multi-use pathway approximately 5300 feet long, along the north side of Snyder Boulevard, between SR 92 and Avenida Del Sol within the City. The second pathway will be along the east side of Coronado Drive, between Carmelita Drive and Tacoma Street, also within the City. This asphalt pathway will be 10 feet wide and approximately 2300 feet long. The State approves the City to self-administer the above design and construction, collectively hereinafter referred to as the "Project".
5. The survey of the Project has been completed and the plans, estimates and specifications will be prepared and as required, submitted to the State and Federal Highway Administration (FHWA) for its approval.
6. The City, in order to obtain Federal funds for the construction of the Project, is willing to provide City funds to match Federal funds in the ratio required or as finally fixed and determined by the City and FHWA, including actual construction engineering (CE) and contingency costs.

NO. 29651
Filed with the Secretary of State
Date Filed: 2-4-08

Secretary of State
By: 

7. The interest of the State for this Project is in the acquisition of Federal funds for the use and benefit of the City and is the designated agent for the City. Funds expended for the Project are authorized by reason of Federal Law and regulations.

Project/Tracs Number	SL609 (Snyder)	SL628 (Coronado)
Design/Engineering 02D:		
Federal Aid Funds @ 94.3%	\$ 51,865.00	\$ 77,798.00
Matching City Funds @ 5.7%	<u>\$ 3,135.00</u>	<u>\$ 4,703.00</u>
Estimated Cost of Design	\$ 55,000.00	\$ 82,501.00
 Construction 01C:		
Federal Aid Funds @ 94.3%	\$ 414,189.00	\$ 298,193.00
Matching City Funds @ 5.7%	<u>\$ 25,036.00</u>	<u>\$ 18,024.00</u>
Estimated Cost of the Project*	\$ 439,225.00	\$ 316,217.00

*(Includes CE administration and contingency fees).

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall:

- a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project, with the recommendation that it be approved for construction.
- b. Approve the Project if such project construction funds are available by FHWA and request the maximum authorized Federal funds for the Project including construction engineering and administration costs.
- c. Upon authorization, notify the City that they may proceed to advertise for, receive and open bids, enter into contracts(s) with a firm(s) to whom the award is made for the construction of the Project.
- d. After bid opening and award of the construction contract by the City, make progress payments to the City for the incurred, eligible costs of the Project, within 30 days after receipt and approval of an invoice. The maximum payments to the City shall not exceed the combined capped Federal Funds of \$712,382.00 for construction and \$129,663.00 for design/preliminary engineering, or \$842,045.00 in total.
- e. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City shall:

- a. Upon execution of this Agreement, designate the State as authorized agent for the City.
- b. Advertise for, receive and open bids, enter into contracts(s) with a firm(s) to whom the award is made for the construction of the Project. The Project shall be performed, completed, inspected, accepted and paid for in accordance with Arizona Procurement Procedures.
- c. Provide personnel to administer and supervise construction. All construction project change orders are to be copied to the State.
- d. Be obligated to incur any expenditure, should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent of the Project scope. Such changes in Project scope will require the prior approval of the State.

e. Complete the Project in accordance with approved plans and specifications and the requirements of the relevant State and Federal Statutes, Rules or Regulations. In the event the City fails to comply with the plans, specifications or any relevant State or Federal Statutes, Rules or Regulations, the City shall hold the State harmless from any claims or costs incurred by the State as a result of the City's actions.

f. Should costs exceed the maximum Federal funds available, or unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this Agreement, it is understood and agreed that the City will be responsible for any overage.

g. Invoice the State for Federal funds upon incurring incurred, eligible design and construction costs, not to exceed the combined capped amount of \$842,045.00 in Federal Aid. The City shall provide, along with the final billing, a letter from its project manager or other responsible engineering official, that the work on the project is complete and has been considered acceptable, and the federal project is ready to be closed.

h. Be responsible for the ongoing maintenance and emergency repairs of said Project. Maintenance shall include but not be limited to keeping the pathway surface and surrounding areas free of all debris and doing any repairs that might be necessary to keep the pathway, safety railing and any retaining wall compliant with the Americans with Disabilities Act Accessibility Guidelines.

i. Upon completion of construction, the City shall provide for, at its own cost, perpetual and proper maintenance of all landscape and drainage improvements. It shall also be responsible for the ongoing maintenance of all landscaping in accordance with accepted horticultural practices.

j. Be responsible for the electrical power and water necessary to maintain the landscaping and irrigation system, including all testing, adjusting, repairing and operation of the irrigation system and shall furnish all power to operate the system.

k. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and Federal Government.

l. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through-traffic. All traffic control will meet the requirements of the most recent Arizona Department of Transportation's "Uniform Traffic Control Manual".

m. Upon Project completion, provide three (3) copies of as-built plans, of any improvements constructed on State right-of-way, to the ADOT Safford District Development Engineer, as per III. Miscellaneous Provisions' paragraph #8 below.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement. The City assumes full responsibility for the design, plans and specifications, reports, the engineering in connection therewith, and the construction of the improvements contemplated, cost over-runs and construction claims. The City will require its contractors to name the State and ADOT as an additional insured in the contractor's insurance policies. The City will also require its contractors to name the State and ADOT as an additional indemnitee in the City contracts with its contractors. It is understood and agreed that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City, and that, to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify the State from loss of any of its departments, agencies, officers or employees from any and all costs and/or damages incurred by any of the above and from any other damage to any person or property whatsoever, that is caused by any activity, condition or event arising

out of the performance, nonperformance or negligent performance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees; the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include any action, court costs, and expenses of litigation or attorneys' fees.

2. The cost of construction and construction engineering work covered by this Agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this Agreement. Therefore, the City agrees to furnish and provide the difference between the total cost of the work provided for in this Agreement and the amount of Federal Aid received.

3. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion of said Project and related deposits or reimbursement, except any provisions for maintenance, electrical power and water shall be perpetual. Further, this Agreement may be canceled at any time prior to the award of the Project construction contract, upon thirty days (30) written notice to the other party. It is understood and agreed that, in the event the City terminates this Agreement, the State shall in no way be obligated to maintain said Project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

8. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation (ADOT)
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, Arizona 85007
Phone: (602) 712-7525
Fax: (602) 712-7424

City of Sierra Vista
Attn: City Manager
1011 North Coronado Drive
Sierra Vista, AZ 85635
Phone: (520) 458-3315
Fax: (520) 458-0584

ADOT Safford District Development Engineer
2082 E. Highway 70
Safford, AZ 85546,
(928) 432-4921

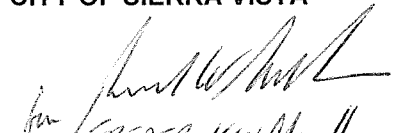
9. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

10. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

11. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.


IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

CITY OF SIERRA VISTA


By 
BOB STRAIN
Mayor

STATE OF ARIZONA

Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

ATTEST:

By 
JILL ADAMS
City Clerk

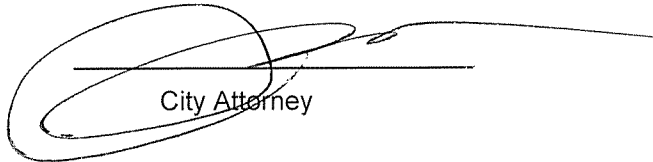
G: 07-102 Sierra Vista Pathways
Initial Draft 10/12/07 ghc
Revised 10/30/07 ghc
FINAL 12/12/07 ghc

ATTORNEY APPROVAL FORM FOR CITY OF SIERRA VISTA

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the CITY, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 10th day of January, 2008.



City Attorney

RESOLUTION 2008 - 007

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE CITY TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION TO CONSTRUCT THE SNYDER BOULEVARD AND CORONADO AVENUE MULTI-USE PATHS; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, it is the settled policy of the City Council to authorize the City staff to seek, make application for, and accept any Federal and State funding assistance for improvements to our community that are beyond the funding capacity of City revenues, when it is determined by the City Council to be in the best interests of the City; and

WHEREAS, the City and State share responsibilities of providing streets and public roadways, which are safe and meet the transportation needs of the general public; and

WHEREAS, traffic volumes on Snyder Boulevard and Coronado Avenue makes it necessary to construct these two (2) multi-use paths in order to improve safety by separating pedestrians and bicyclists from vehicular traffic; and

WHEREAS, it is in the mutual interest and benefit of the Arizona Department of Transportation (ADOT) and the City to construct two (2) multi-use paths along Snyder Boulevard and along Coronado Avenue; and

WHEREAS, both parties desire to enter into an Intergovernmental Agreement that will allow ADOT to share the project costs of design and construction of a multiuse path along Snyder Boulevard, with a total estimated cost of Four Hundred Ninety Four Thousand Two Hundred and Twenty Five Dollars (\$494,225.00); of which Four Hundred Sixty-Six Thousand and Fifty-four dollars (\$466,054) will be funded by ADOT; and Twenty-Eight Thousand One Hundred Seventy-One dollars (\$28,171) will be funded by the City of Sierra Vista; and

WHEREAS, both parties desire to enter into an Intergovernmental Agreement that will allow ADOT to share the project costs of design and construction of a multiuse path along Coronado Ave, with a total estimated cost of Three Hundred Ninety Eight Thousand Seven Hundred and Eighteen Dollars (\$398,718); of which Three Hundred Seventy-Five Thousand Nine Hundred Ninety-one dollars (\$375,991) will be funded by ADOT; and Twenty-two Thousand Seven Hundred Twenty-seven dollars (\$22,727) will be funded by the City of Sierra Vista.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS;

SECTION 1

That the settled policy of the City Council of seeking Federal and State funding assistance, most recently affirmed by Resolution 2005-137, be, and hereby is, reaffirmed.

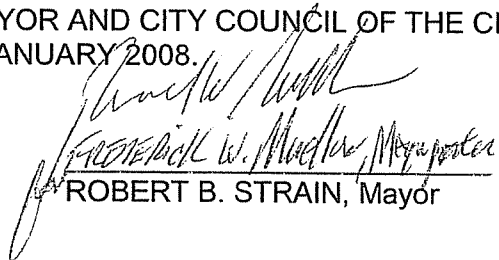
SECTION 2

That the City Council approves entering into an Intergovernmental Agreement with ADOT to share the project costs of designing and constructing a multi-use path along Snyder Boulevard and Coronado Drive, which has a total estimated combined cost of \$842,045 from ADOT, and \$50,898 from the City.

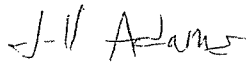
SECTION 3

That the City Manager, City Clerk, City Attorney or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution,

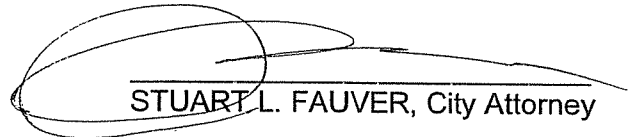
PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 10TH DAY OF JANUARY 2008.


ROBERT B. STRAIN, Mayor

ATTEST:


JILL S. ADAMS, City Clerk

APPROVED AS TO FORM:


STUART L. FAUVER, City Attorney

PREPARED BY: D. MICHAEL CLAWSON, Purchasing Manager

<p>TERRY GODDARD Attorney General</p>	<div data-bbox="741 81 928 268" data-label="Image"> </div> <p>OFFICE OF THE ATTORNEY GENERAL STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan.Davis@azag.gov</p>
--	--	--

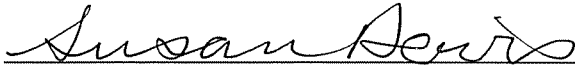
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. P0012007004281 (**JPA 07-102-I**), an Agreement between public agencies, i.e., The State of Arizona and City of Sierra Vista, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: January 29, 2008

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED:mjf:133523
Attachment